

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ROBERT J. TROKAN,

Petitioner,

v.

Case No. 05-C-1045

**PAMELA WALLACE,
Warden, Stanley Correctional Institution,**

Respondent.

DECISION AND ORDER

On October 3, 2005, the petitioner Robert J. Trokan ("Trokan") filed his habeas petition pursuant to 28 U.S.C. § 2254. By order of this Court dated November 18, 2005, Trokan's petition was dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. On December 23, 2005, the Court received Trokan's "Motion to Vacate Order of Dismissal and Reopen Petition."

In his motion to vacate, Trokan contends that the this Court lacked jurisdiction to dismiss his habeas petition because he had previously filed a consent to proceed under the jurisdiction of a United States Magistrate Judge. This is a non-argument. An action proceeds before a magistrate judge only upon the consent of *both* parties to that action. *See* Fed. R. Civ. P. 73. This Court retained jurisdiction over Trokan's petition and properly exercised that jurisdiction in dismissing his petition.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Trokan's Motion to Vacate Order of Dismissal and Reopen Petition (Docket No. 6)
is **DENIED**.

Dated at Milwaukee, Wisconsin this 22nd day of March, 2006.

BY THE COURT

s/ Rudolph T. Randa
Hon. Rudolph T. Randa
Chief Judge